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Current Topics.

Excess Profits Tax.

THE Chancellor of the Exchequer recently received two deputations on the subject of the Excess Profits Tax. That from the Federation of British Industries was introduced by LORD DUDLEY GORDON, the president-elect, who stated that, in general, industry was quite prepared to bear its full share of the cost of the war, but urged that the standards and allowances should be fixed on a fair basis. Mr. C. A. FRYER said that the federation felt it unfair, in determining the profits standard, to rule out the profits of the year 1938 from the standard periods in a general tax like that in question, inasmuch as many businesses had improved their position quite apart from even an indirect effect of rearmament. He thought that the proposals for arriving at an alternative standard gave quite inadequate powers to the Board of Referees, and that a limitation imposed on the board with reference to ordinary capital alone would create serious inequity, particularly for private companies where the capital structure frequently did not represent the capital actually employed in the business. The federation advocated the reintroduction of the percentage based upon capital employed. The speaker also asked for the revival of the Excess Profits Duty provision that appropriate variations in the statutory percentage might be obtainable to meet variations in risk and other factors between one industry and another. Mr. HENRY MORGAN, chairman of a joint committee formed by the Association of British Chambers of Commerce, in the second deputation above referred to, said that it had been found possible to consult members of the Board of Inland Revenue regarding the revision of the Finance Act, and that might be of no little value in helping the Chancellor of the Exchequer to come to a decision on many important points. He thought it unfortunate that the Excess Profits Tax should be the immediate successor to and substitute for the Armaments Profits Duty. The former incorporated many of the features of the latter which it would be inequitable to apply to other businesses. Particular reference was made to the fact that the minimum standard of £1,000 took no account of whether the proprietor was managing his own business or whether the business was under other management, and it was urged that the position of owner-manager should be recognised by an adequate allowance. Mr. STUART ALLEN thought that the present limitation of the standard period would operate unfairly, and argued that the Board of Referees should have certain discretion in the matter. A higher statutory percentage and the abolition of anomalies in the percentage standard were desired, and the Board of Referees should not be restricted in their power to discover and to grant standard profits representing reasonable earnings.

The Word "Garden."

A SHORT point of some interest was raised in the House of Lords recently, when the Agricultural (Miscellaneous War Provisions) Bill was considered in committee. Clause 27 (1) of that measure extends land fertility schemes to "any land wholly or mainly cultivated for the production of vegetables or fruit" which is to be deemed to be "agricultural land" for the relevant purposes of the measure notwithstanding that it is not included in the definition of such in s. 32 of the Agriculture Act, 1937. LORD PHILLIMORE moved on behalf of LORD BLEDISLOE an amendment to insert after the words "any land" the phrase "being a garden or allotment and." LORD DENHAM submitted that the amendment was quite unnecessary. As to the word "allotment," agricultural land was defined in the Act above cited as "any land used as arable meadow or pasture ground, or for the purpose of poultry farming, market gardens, nursery gardens, orchards, or allotments, including allotment gardens within the meaning of the Allotments Act, 1922." As to the proposed insertion of the word "garden," that word (LORD DENHAM said) was not defined for the very good reason that it was almost impossible to define a garden. "I am advised," the same speaker continued, "that the word 'garden' is never used alone in any statute. It is always qualified in some way. A tennis court is often part of a garden, but it is not that part of a garden with which we are concerned this afternoon." It was, therefore, better to deal with gardens in terms of user, and the words "any land wholly or mainly cultivated for the production of vegetables or fruit" were used so as to include gardens, and above all little gardens, because big gardens were already included in the definition. The amendment was by leave withdrawn.

The "Black-out": Motoring Offences . . .

ALLEGED discrepancies in the penalties inflicted for breaches of the law, particularly that branch of the law relating to road traffic, were by no means uncommon in pre-war days. The imposition of a speed limit of 20 miles an hour during

the black-out period is generally recognised as an admirable safety measure, but complaints have been made of the wide variation in the degree of severity with which its infringement is visited. *The Sunday Times* of 24th March states that steps are being taken to ensure what is described as a reasonable degree of uniformity for infringements. A recently issued statement by the Automobile Association points out that fines varying from 10s. to £20 have been inflicted at different courts in the metropolitan area in cases where, it is alleged, the circumstances were almost similar; and it is urged that the disparity in courts in the provinces is equally marked. It appears that the same association is compiling particulars of "doubtful methods of enforcement"—such as trapping on open stretches of road at dusk when the black-out has just started, and in bright moonlight—and of similar instances of what are described as straining the letter of the law to secure convictions. Cases of this kind, with details of alleged harsh and extreme penalties, are to be submitted, so that all the circumstances may be reviewed by the authorities "to secure protection for the reasonable motorist." Attention is drawn to the various perplexities confronting the motorist driving at night, such as the difficulty of recognising speed limit signs and the impossibility of constantly keeping an eye on the speedometer when concentration on traffic is essential; but while paying due regard to the difficulties of the position it may not unfairly be suggested that the remedy lies with the motorist himself, who can readily "secure protection" by observing the law.

. . . Reduction of Accidents.

CONSTRUCTIVE suggestions for the reduction of road accidents during the black-out are made by Mr. EDWARD H. FRYER, deputy secretary of the Automobile Association in the journal of the Institute of Transport. In regard to the general position the writer urges that at no time in our history has it been more desirable to convince every member of the public of the necessity for making his or her contribution towards road safety. He is of opinion that this can be more readily achieved by consent and voluntary effort than by arbitrary legislation and regulation, and states that in the main the way to the reduction of accidents lies in the development of a proper spirit of give and take—with more give than take—between all classes of road users, and the acquirement of the necessary road sense by every user of the highway, both carriageway and footway. As to detailed proposals, Mr. FRYER thinks that a considerable reduction in the number of accidents could be brought about without undue expenditure by the immediate adoption of certain of the recommendations contained in the report of the House of Lords Committee. He urges that, as a first step, the following proposals might be considered: The fitting with "Cross Now" and "Don't Cross" auxiliary lights at eye level of existing traffic lights controlling road intersections carrying heavy pedestrian traffic; the substitution of vehicle-operated for time-cycle installations; improved visibility of traffic lights during daylight by rendering visible the lower faces of the lenses; and the installation of additional vehicle-operated traffic lights at important intersections formerly controlled by the police or safeguarded by patrols. In regard to the penultimate suggestion the announcement that traffic lights are to be bright by day and dim by night is of interest. A new design, which has been approved by the Home Office, will allow the whole of the top half of the lenses to be visible, the power of the light itself being suitably reduced at night. Mr. FRYER states that whether walking, riding or driving in the dark the greatest aids to safe progress are traffic lights at road intersections and "St. Andrew" lights on bollards. The latter, in that they have no diffusion either upwards or on the roadway, are regarded as most useful navigating lights, and when not higher than 2 feet from the roadway their usefulness as indicating the passage of pedestrians, including children and animals, is emphasised. Somewhat extensive reference has been made to this article because it is one of the most helpful to which our attention has been directed.

Rules and Orders: Courts (Emergency Powers) Consolidation.

THE attention of readers should be drawn to the Courts (Emergency Powers) (Consolidation) Rules, 1940, which consolidate the Courts (Emergency Powers) Rules, 1939, the Courts (Emergency Powers) (No. 2) Rules, 1939, and the Courts (Emergency Powers) (No. 1) Rules, 1940. The last-named were published at p. 171, and referred to in an article, on p. 159, of our issue of 9th March. The consolidating Rules will doubtless be found a great convenience to the profession. They are published by H.M. Stationery Office, price 3d. net.

Recent Decisions.

IN *Fife Coal Co.* v. *Young* (*The Times*, 15th March) the House of Lords upheld a decision of the First Division of the Court of Session to the effect that the Sheriff-Substitute was not entitled to find that a workman's incapacity known as "dropped foot" was not due to injury by accident within the meaning of s. 1 of the Workmen's Compensation Act, 1925. It was agreed that the respondent's condition was due to his work in the appellants' employment, and the Sheriff-Substitute found that the incapacity was due to repeated pressure on the outside of the right knee when working in a crouching position in the course of his employment.

In *Evans* v. *Oakdale Navigation Collieries, Ltd.* (*The Times*, 19th March), the Court of Appeal (SLESSER, LUXMOORE and GODDARD, L.JJ.) held that where a workman was injured by an accident and subsequently contracted silicosis, the Silicosis Scheme, 1931, required the workman to be assumed to be of full capacity at the date when he was totally incapacitated by the disease and capable of earning the wage paid to him before the accident. See *Cole* v. *Amalgamated Anthracite Collieries*, 26 B.W.C.C. 560. *Harwood* v. *Wyken Colliery Co.* [1913] 2 K.B. 158, and *Thompson* v. *London and North Eastern Rly.* [1935] 2 K.B. 90, distinguished. Leave was given to appeal to the House of Lords.

In *Re Payne's Declaration; Re Payne, deceased, Poplett* v. *Att.-Gen.* (mentioned in *The Times*, 20th March), the Court of Appeal (SCOTT, CLAUSON and LUXMOORE, L.JJ.) upheld a decision of SIMONDS, J., 83 SOL. J. 731, to the effect where property is settled by a testator in his lifetime by way of gift and has to be included by his executors in the estate duty account by reason of his death within three years, the property to be valued for estate duty purposes is the property as it stands at the date of the death and not the property put into the settlement when the latter is made.

In *Rex* v. *Carmichael* (*The Times*, 20th March) the Court of Criminal Appeal (CHARLES, MACNAGHTEN and OLIVER, JJ.) gave reasons for quashing on 11th March the appellant's conviction at the Central Criminal Court of incest with his daughter. The court reversed a decision of WROTTESLEY, J., and held that the rule in *Russell* v. *Russell* [1924] A.C. 687, did not preclude the appellant from giving evidence in support of his plea that he did not believe the woman to be his daughter, including an admission or confession by her mother.

In *King Features Syndicate, Inc.* v. *O. & M. Kleeman, Ltd.* (*The Times*, 21st March), SIMONDS, J., held that the plaintiffs' copyright in drawings and cartoons of a fictitious character known as "Popeye the Sailor" had been infringed by the defendants by the production and sale of toys reproducing the figure of the same character. The learned judge negatived the argument that representations of the figure were capable of being registered as designs under the Patents and Designs Acts, 1907 to 1932, and therefore, by s. 22 of the Copyright Act, 1922, were not the subject of copyright.

Criminal Law and Practice.

NON-COMPLIANCE WITH A BILLETING NOTICE.

MOST of the problems relating to the billeting of "evacuated" persons have been settled without the assistance of members of the legal profession in their professional capacity. This is as it should be, and it is one of the more satisfactory features of the evacuation scheme that such friction as was bound to occur has usually been smoothed over by those in authority in the locality. The Defence Regulations, however, are strict, and it has at times been found advisable to threaten prosecution for infringement, and sometimes to carry out those threats.

An interesting prosecution under reg. 22 (relating to billeting) was reviewed by the Divisional Court on 18th March (*Mee* v. *Tone*, *The Times*, 19th March). Briefly, the question before the court was whether a billeting notice is suspended pending a complaint to the tribunal. The billeting notice may be served on the occupier of any premises and requires him to furnish "while the notice remains in force" such accommodation, by way of lodging or food or both, and either with or without attendance, as may be specified in the notice, for such persons as may be so specified (reg. 22 (1)). Regulation 22 (6) empowers a billeting officer to revoke a billeting notice, and the Minister of Health or the Commissioners of Works to order that all billeting notices "for the time being in force" shall cease to have effect, either generally, or as regards premises in a particular area. Under reg. 22 (7) the occupier must surrender his notice to a billeting officer for cancellation or amendment if it is revoked, or ceases to have effect, or if the accommodation ceases to be provided.

Tribunals are constituted under reg. 22 (9) for the purposes of hearing complaints in respect of billeting notices. Any person who is aggrieved by the service upon him of a billeting notice, or by the operation of a billeting notice served upon him, may make a complaint to the tribunal, which, upon hearing the complaint, may cancel or vary the billeting notice as it thinks fit. The offence of contravening or failing to comply with the requirements of a billeting notice or with any of the requirements of the regulation is punishable summarily, in accordance with reg. 22 (8), by a fine not exceeding £50 or imprisonment for a term not exceeding three months or both such fine and such imprisonment.

The respondent had been charged before the magistrates with failure to comply with a billeting notice requiring her to provide board and lodging for two children. At the time of the service of the notice the children, who were present, were in quarantine after having suffered from diphtheria. The respondent refused to furnish the required board and lodging, and later lodged a complaint with the tribunal under reg. 22 (9). At the time of the hearing before the magistrates, the tribunal had not yet heard the complaint, and on her behalf it was argued that the billeting notice was not in force until the tribunal had determined the complaint. The justices agreed with this contention and dismissed the information.

Mr. Justice Hawke, Mr. Justice Charles and Mr. Justice Macnaghten all agreed that the regulation made it clear that, once a billeting notice had been served, it was alive and remained alive until it was removed by revocation by the billeting officer or generally by order of the Minister of Health or the Commissioner of Works. Mr. Justice Hawke pointed out that reg. 22 (8) could not be read as if it provided that if a person failed to comply with the notice he should be guilty of an offence "unless he had first complained to the tribunal set up by para. (9) of the regulation." Mr. Justice Charles added that there was nowhere any provision for the suspension of the operation of a billeting notice because its recipient had lodged a complaint against it.

The misapprehension that arose in this case was natural, having regard to the number of Acts which provide for appeals and the suspension pending such appeals of the operation of notices or orders. Under s. 15 of the Housing Act, 1936, for example, any person aggrieved by one or more of various matters, including demolition orders and closing orders, is given a right of appeal to the county court, but the section expressly provides that "no proceedings shall be taken by the local authority to enforce any notice, demand, or order in relation to which an appeal is brought before the appeal has been finally determined." It is true that a statute, which, like the Defence Regulations, encroaches upon the personal or property rights of the subject, must manifest its intention beyond reasonable doubt. In this respect, even if, as Mr. Justice Hawke said, the regulations show signs of having been prepared in some haste, they are certainly not deficient, as their meaning is as clearly expressed as one could expect in any Act of Parliament or regulation. The gist of the matter is that, as Mr. Justice Charles put it, the policy of the regulations is to secure the safety of tens of thousands of children, although doing so might here and there work hardship. The safety and care of the children are paramount, and the fact that those who drafted the regulations omitted any provision suspending the operation of a billeting notice pending the hearing of a complaint, indicates quite clearly that they fully appreciated that any other course might have seriously prejudiced the success of the evacuation scheme by enabling householders to delay the provision of accommodation by lodging batches of complaints.

WHAT IS A "CRIMINAL CAUSE OR MATTER"?

THE Court of Appeal, as stated in last week's "Current Topics," recently had to decide whether the jurisdiction of the Army Council, with regard to courts martial, related to criminal proceedings within s. 31 of the Supreme Court of Judicature (Consolidation) Act, 1925 (*The Times*, 14th March, 1940). That section provides, *inter alia*: "No appeal shall lie —(*a*) except as provided by the Criminal Appeal Act, 1907, or this Act, from any judgment of the High Court in any criminal cause or matter."

The Army Council's jurisdiction arises (*a*) under the King's Regulations to decide whether the proceedings at a court martial should or should not be quashed and (*b*) under s. 57 (2) of the Army Act, to mitigate, remit or commute sentences. Lord Justice Slesser stated that the former seemed clearly to be a criminal proceeding. With regard to the latter, he said that, although it might be argued that the remission of a sentence was not necessarily a judicial act—for instance, the act of the Home Secretary in remitting a sentence passed by a criminal court—the language of s. 57 (2) extended to the dealing with the punishment itself, and therefore, the competent authority under that section was exercising judicial functions just as much as the Court of Criminal Appeal did when called on to deal with a sentence passed by a criminal court.

With regard to the contention that the Army Council was not a court, the learned Lord Justice said that the question was not whether it was a court in the narrow sense, but whether its decision was a decision in a criminal cause or matter. If a tribunal, which was vested with criminal jurisdiction of a judicial or quasi-judicial nature, exercised the jurisdiction, it followed that an application for a *mandamus* in relation to such exercise was in respect of a criminal matter. The court, therefore, held that it had no jurisdiction to hear an appeal from the decision of the High Court on the matter.

The meaning of the words "criminal cause or matter" in this context has been considered in many authorities. Lord Esher, in *Ex parte Woodhall*, 20 Q.B.D. 835, in a passage cited with approval by Swinfen Eady, L.J., and Bray, J., in the Court of Appeal, in *R.* v. *Garrett* [1917] 2 K.B. 99, 107, said: "The result of the decided cases is to show that the words 'criminal cause or matter,' in s. 47 (the corresponding section of the Judicature Act, 1873) should receive the widest possible

interpretation. . . . I think that the clause of s. 47 in question applies to a decision by way of judicial determination of any question raised in or with regard to proceedings, the subject-matter of which is criminal, at whatever stage of the proceedings the question arises. . . . If the proceeding before the magistrate was a proceeding the subject-matter of which was criminal, then the application in the Queen's Bench Division for the issue of a writ of *habeas corpus*, which if issued would enable the applicant to escape from the consequences of the proceeding before the magistrate, was a proceeding the subject-matter of which was criminal." The same is true of *certiorari* (*R.* v. *Fletcher*, 2 Q.B.D. 43) and of prohibition (*Clifford* v. *O'Sullivan* [1921] 2 A.C. 570 (*per* Lord Sumner, at p. 586, where he said that the writ of prohibition was in itself no more and no less criminal than it is the contrary, and the question must be decided according to the subject-matter of the application)). The same must also, it follows, be true of *mandamus*. In *Clifford* v. *O'Sullivan*, *supra*, the majority of the court assumed that a court martial's jurisdiction was criminal (see *per* Viscount Cave, at pp. 580 and 581 of [1921] 2 A.C.). The present decision, therefore, closely follows the authorities on the subject.

The County Court (Emergency Powers) (No. 1) Rules, 1940.

THESE rules, which are made under the Courts (Emergency Powers) Act, 1939, come into force on the 1st April, 1940. They amend rr. 8, 9 and 16A of the County Court (Emergency Powers) Rules, 1939, and add a new r. 16B and a new form of order giving leave to distrain. They are printed in full on p. 223 of this issue.

The main effect of the new r. 8 appears to be to enable a notice under the Act (Form 2) to be annexed to an ordinary summons and to be served with it according to the rules governing the service of ordinary summonses, viz., Ord. 8, Pt. II. Presumably, therefore, if the summons and notice are left by the bailiff with a person apparently over sixteen at the defendant's residence, the service will be good service subject to the provisions about doubtful service (Ord. 8, r. 30). As regards default summonses the position is unchanged.

Rule 9, as amended, will apply only where the default or ordinary summons has been served without a notice under the Act. The plaintiff will in such a case be able to use Form 2 before judgment or Form 3 after judgment, but service must, as before, be personal unless (1) substituted service is ordered, or (2) service is by bailiff and the registrar is satisfied (under r. 9 (3) (*b*) or (*c*)) that some other form of service is proper in the circumstances. Where the notice is sent for service in a "foreign" district, it has hitherto been doubtful which registrar is to exercise the discretion conferred by r. 9 (3) (*b*). The new rules make it clear that it is the "foreign" registrar.

There is an important extension of the provision enabling a notice to be served by being posted on the premises in certain circumstances (r. 9 (3) (*c*)). Hitherto this provision has been confined to the case of judgments for the recovery of possession of premises in default of payment of rent. The new rules (r. 3 (4)) extend it to cover judgments for delivery of possession of mortgaged property by the mortgagor to the mortgagee.

The effect of the first amendment of r. 16A is to enable a notice (Form 10) to be annexed to an originating application and to be served with it according to the rules governing the service of ordinary summonses.

The new para. (6) of r. 16A enables service to be dispensed with in three very limited classes of mortgage case, and the new r. 16B enables service to be dispensed with if the respondent is an enemy within the meaning of s. 2 of the Trading with the Enemy Act, 1939. It should be observed that the definition of enemy in that section does not include enemy subjects resident in this country.

The County Court (Emergency Powers) Rules appear to need consolidating no less than the rules under the same Act relating to other courts, which have already been consolidated.

Memorandum in Writing of Contract.

CONTRACTS for sale of an interest in land are required to be in writing in order to be binding. This has been the law since the seventeenth century and the relevant enactment to-day is s. 40 of the Law of Property Act, 1925, which, reproducing, with verbal alterations, s. 4 of the Statute of Frauds, so well known to generations of students, provides that—

> "No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised."

The memorandum need not be signed by or on behalf of both parties. If only one of them, either personally or by his agent, has signed, he will be bound though the other will not (*Seton* v. *Slade*, *Hunter & Seton* (1802), 7 Ves. 265). The memorandum must contain all the material terms. It must state the names of both parties or such a description of them that there can be no dispute as to their identity (*Potter* v. *Duffield* (1874), L.R. 18 Eq. 4). It must sufficiently describe the property and the interest therein to be sold (*Cox* v. *Middleton* (1854), 2 Drew 209; *Dolling* v. *Evans* (1867), 36 L.J. Ch. 474), and it must state the consideration (*Blagden* v. *Bradbear* (1806), 12 Ves. 466).

The written memorandum of the contract need not be comprised in a single document, but if there are two or more documents they must be so connected as to be capable of being read together as one. Thus, a letter from a vendor making an offer to sell, naming the price and describing the property, could be connected with the purchaser's reply expressly referring to the letter and accepting the offer. It must appear upon the face of the document signed by the party to be charged that reference is made to some other document, and in that case the other document may be identified by parol evidence (*per* Thesiger, L.J., in *Long* v. *Millar* (1879), 4 C.P.D. 450). In the last-mentioned case the plaintiff signed a memorandum agreeing "to purchase the three plots of land at H for £310 and to pay as a deposit and in part payment of the purchase money £31." The defendant gave the plaintiff a receipt in these terms: "Received of G £31 as a deposit on the purchase of three plots of land at H." It was held that the two documents sufficiently referred to one another to constitute a memorandum within the statute In *Studds* v. *Watson* (1884), 28 Ch. D. 305, the defendant signed a document to this effect: "September 22, 1882. Received of S one pound of my share in the B Grove property the sum of £200." This illiterately phrased receipt related to a parol agreement which the defendant had made to sell her share in certain property for £200. Several months later the defendant wrote to the plaintiff: "If the balance of £199 on account of the purchase of my share of the property be not paid on or before the 22nd inst. I shall consider the agreement made September 22, 1882, not any longer binding." It was held that the word "balance" in the letter sufficiently referred to the receipt to enable the two documents to be read together and that they constituted a memorandum under the statute.

An interesting case was *Pearce* v. *Gardner* [1897] 1 Q.B. 688. The defendant had agreed to sell some gravel to the plaintiff, who was to dig it and carry it away. The defendant wrote a letter to the plaintiff setting out the terms, but it was merely addressed "Dear Sir," and did not include the purchaser's

name. The omission of the name or some sufficient description of one of the parties made the letter in itself inadequate as a memorandum under the statute, but in an action which the plaintiff brought for breach of contract, he gave evidence that he had received the letter through the post in an envelope addressed to him. The question was as to whether the letter and envelope could be connected together and the Court of Appeal held that they could. Lord Esher, M.R., said :—

"The common sense of the matter seems to me to be that the envelope and the letter within it were sent together and may be taken together ; so that the effect is the same as if the name of the plaintiff had been written at the foot or indorsed on the letter. I come, therefore, to a conclusion that there was a sufficient memorandum in writing, and that the judgment of the learned judge was right."

In *Pickles* v. *Sutcliffe* [1902] W.N. 200, a written contract contained a clause : "The land is sold subject to the conditions of the Halifax Incorporated Law Society." In an action by the vendor for specific performance, the purchaser contended that there was no sufficient memorandum, but merely a vague reference to agreed conditions which might vary from time to time. Farwell, J., held that the conditions referred to were those sanctioned by The Law Society at the time of the contract, and that when a copy was once identified by evidence it became an illustration of the maxim "*Id certum est quod certum reddi potest.*" The decision is important when one remembers how common is the practice of incorporating forms of general conditions (for example, The Law Society's 1934 Conditions) in contracts.

Another case in which the facts are of everyday occurrence was *Munday* v. *Asprey* (1880), 13 Ch. D. 855. The respective solicitors for the parties had arranged terms of sale of certain land verbally. Later the purchaser's solicitors wrote the vendor's solicitors a letter referring to the engrossment of the conveyance and a draft which they were enclosing and which contained a recital of the agreement. The question in a subsequent action was as to whether the letter with the enclosures constituted a written memorandum of the contract sufficient to bind the purchaser, and Fry, J., held that it did not. "My opinion," he said, "is that the letter contains no more than the statement of an expectation of what Mr. Cookson called a paulo-post future contract. If I develop the meaning of the letter and the inclosed engrossment, it seems to amount to this, 'We believe that there is either a contract to sell this land, or that there will be such a contract at the time when the conveyance is executed and the purchase money paid by the purchaser.' The statute requires that a concluded agreement existing at the time when the memorandum is signed should be proved by the plaintiff, whereas the document, as I have said, shows no actual existing agreement."

A somewhat extraordinary case was *Dewar* v. *Mintoft* [1912] 2 K.B. 373. The effect of it is that, in the very act of repudiating, a person may find that he has provided a sufficient memorandum to satisfy the statute. The defendant, casually attending an auction sale, started the auctioneer with a bid of £1,500 and the property was knocked down to him, but he left the room without signing the contract or paying a deposit. The auctioneer wrote on the particulars and conditions of sale the name of the defendant and the price. The defendant at once wrote to the auctioneer that he had had no intention of becoming the purchaser of the property, but had merely intended to give the sale a friendly start. There was further correspondence. The vendor's solicitors wrote two letters, in one of which they referred to the property, the price and the fact that the defendant's name was written on the particulars of sale. The defendant wrote letters to the vendor and to the vendor's solicitors. In one of these he acknowledged the letter he had received, admitted he had made the £1,500 bid, and that the property had been knocked down to him, but asserted again that he had not intended to purchase. Horridge, J., held that by the correspondence the defendant had provided a sufficient written memorandum, that the letters contained full particulars of the verbal contract although they were accompanied by a repudiation of liability by the defendant, and that on the authority of *Long* v. *Millar*, *supra*, verbal evidence could be given to show which were the particulars of sale referred to.

Another case with unusual facts was *Grindell* v. *Bass* [1920] 2 Ch. 487. Mrs. B had agreed to sell freehold property to E in consideration of an annuity. Subsequently she agreed to sell the same property to G, who brought proceedings for specific performance against her, which she defended, one of her grounds being that she had previously agreed to sell to E. Mrs. B delivered a defence to the action brought by G, and in one paragraph the terms of the prior agreement with E were set out in full. G thereupon joined E as a defendant. E delivered a defence in which he counterclaimed for specific performance of the agreement with him and a declaration that he was entitled to the property free from all right or interest of G. Russell, J., held that there was no sufficient memorandum in existence before the action, but E contended that the relevant paragraph of the defence delivered in answer to G's claim was sufficient to satisfy the statute. It admittedly contained all the material terms, and it was signed in the usual way by Mrs. B's counsel. Russell, J., holding in favour of E and making the declaration asked for, said :—

"No one can doubt that Mrs. B's counsel was by her authorised to sign the defence and to allege in the defence the existence and terms of her contract with E as an answer to the claim of the plaintiff. It matters not that the fact that a memorandum within the Statute of Frauds would thereby be brought into existence was not present to the minds of either counsel or client. I am of opinion that counsel being the authorised agent to sign the particular document is an agent 'thereunto lawfully authorised' within the meaning of the statute, and that the document, containing as it does all the necessary terms, is a proper memorandum within the statute."

In another part of his judgment Russell, J., quoted Sargant, J., who in *Daniels* v. *Trefusis* [1914] 1 Ch. 788, said that the Statute of Frauds might be satisfied as the "unintentional by-product" of a note signed by an agent provided that the agent had authority to sign the particular note.

Company Law and Practice.

(*Continued from p.* 198.)

Charges requiring Registration under the Companies Act.—II.

Last week I was discussing the charges specified in s. 79 (2) of the Companies Act, 1929, as requiring registration and had made some observations on (*a*) charges for the purpose of securing any issue of debentures, and (*b*) charges on uncalled share capital. I proceed now to a brief consideration of the remaining charges mentioned in that subsection.

(*c*) A charge created and evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale. The Bills of Sale Act, 1878, requires registration of every bill of sale whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of personal chattels, as defined by that Act. Accordingly, a mortgage or charge by a company of personal chattels within the meaning of the Bills of Sale Acts, if the mortgagee or chargee has such a power to seize the chattels, must be registered under the Companies Act. If the instrument creating the charge would, if executed by an individual, be void by reason, e.g., that it is not in the statutory form

required by the Bills of Sale Acts or is not attested, it is nevertheless registrable under the Companies Act if executed by a company (see *Dublin City Distillery, Ltd.* v. *Doherty* [1914] A.C. 823, at p. 854).

Mortgages or charges of personal chattels registrable under the Companies Act are not bills of sale within the scope of the Bills of Sale Acts (see *In re Standard Manufacturing Co.* [1891] 1 Ch. 627).

(*d*) A charge on land, wherever situate, or any interest therein. This requires little comment. The reference to "any interest" presumably includes an equitable interest. But the holding of debentures conferring a charge on land is not for this purpose an interest in land (s. 79 (7)). A charge on land of a company for securing money which would, if the land belonged to an individual, require registration under the Land Charges Act, 1925, is sufficiently registered for the purposes of that Act if registered under the provisions of the Companies Act (Land Charges Act, 1925, s. 10 (5)).

(*e*) A charge on book debts of the company. The Act does not contain any definition of the expression "book debts," and it is not always easy to determine whether a particular debt is or is not a book debt. In *Official Receiver* v. *Tailby*, 18 Q.B.D. 25, at p. 29, Lord Esher said: "I apprehend that the meaning of the term 'book debts' is confined to debts arising in a business in which it is the proper and usual course to keep books, and which ought to be entered in such books, though I do not think that the term is confined to debts which are actually entered in the books." The term has no doubt a well-recognised commercial meaning and there is little difficulty in applying it to ordinary trading debts. In *Re George Inglefield, Ltd.* [1933] Ch. 1, Eve, J., held that rentals under hire-purchase agreements were book debts, the Court of Appeal expressing no opinion on the point.

It is expressly enacted by s. 79 (6) that where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of the section be treated as a charge on those book debts.

(*f*) A floating charge on the undertaking or property of the company. The exact nature of a floating charge has from time to time been the subject of exhaustive consideration by the courts and text-book writers, and it is no part of the present article to consider the question at any length. It will suffice to refer to the well-known passage in the judgment of Romer, L.J., in *Re Yorkshire Woolcombers' Association, Ltd.* [1903] 2 Ch. 284, at p. 295, where he sets out the three characteristics of a floating charge, viz.: (1) If it is a charge on a class of assets both present and future; (2) if that class is one which in the ordinary course of the business of the company would be changing from time to time; (3) if it is contemplated by the charge that, until some future step is taken by the mortgagee, the company may carry on its business in the ordinary way so far as concerns the particular class of assets charged. Modern forms of debentures often expressly state that the charge is to be a floating security, but the fact that a particular charge is not designated as a floating charge would not determine the question whether it is or is not such a charge. It is important to observe that a charge, to be floating, need not be on the whole undertaking or property of a company; as mentioned above, however, one of its characteristics is that it is a charge on a class of assets. Incidentally, it may be noted that Romer, L.J., in the passage to which I have referred, made it clear that it was not his view that you could not have a floating charge unless it possessed all three characteristics: and in theory I suppose there could be a charge on a specific item of property expressed to be a floating security, though it is difficult to visualise circumstances in which such a charge could be created since the practical value of a floating charge is that it is a charge on a class of assets which are changing from time to time, and permits the company to deal with those assets in the ordinary course of its business until the charge crystallizes.

(*g*) A charge on calls made but not paid. Such a charge was not expressly referred to in the corresponding section of the 1908 Act. It must be rare to have a charge on sums owing in respect of calls except as part of a floating charge on the company's assets generally.

(*h*) A charge on a ship or any share in a ship. This needs no further comment.

(*i*) A charge on goodwill, on a patent or licence under a patent, on a trade-mark or on a copyright or a licence under a copyright. These charges require registration for the first time under the 1929 Act.

So much for the charges required by the section to be registered. Section 81 provides for the case of a company acquiring property which is subject to a charge: if the charge is of such a kind that if it had been created by the company after the acquisition of the property it would have required registration, i.e., if it is one of the charges specified in s. 79 (2), particulars of the charge must be duly registered. This requirement first appeared in the 1929 Act.

It remains to mention some of the charges, registration of which is not specifically required by the Act. I am not proposing to make an exhaustive list of such charges, and it should always be borne in mind that any such charge may, in fact, require to be registered because in the particular circumstances it falls within one or other of the categories enumerated by the section, e.g., if it is created for the purpose of securing an issue of debentures. Charges on equitable interests are not mentioned in the section except that a charge on an equitable interest in land is apparently included in para. (*d*), *supra*. Accordingly, if a company has acquired a life or reversionary interest in property subject to the trusts of a will or settlement, a charge created by the company on that interest will not, of itself, require registration unless the property consists either wholly or partly of land. Again, charges on shares and securities held by a company are not expressly referred to; nor are charges on the profits of a company. Charges on profits may, however, be floating charges and registrable for that reason (cf. *Lemon* v. *Austin Friars Investment Trust, Ltd.* [1926] Ch. 1). Moreover, when considering the question whether a particular charge requires registration, it is important to remember the wide interpretation given to the word "debentures," and consequently the wide application of para. (*a*), *supra*. The charge may well be on a kind of property which is not mentioned in the section, but if it is a charge to secure a debt it will usually be a charge "for the purpose of securing an issue of debentures," and consequently require registration.

A Conveyancer's Diary.

Lapse of Charitable Legacies.

WHERE a testator leaves a legacy to a particular charity and that charity ceases to exist before the death of the testator, the legacy fails. Thus, in *Fisk* v. *Attorney-General* (1867), 4 Eq. 521, the testatrix gave £1,000 Consols to "the treasurer for the time being of the Ladies' Benevolent Society of Liverpool, to be by him held and applied as part of the ordinary funds of the said society." The will was made in 1853, at which date the Ladies' Benevolent Society of Liverpool was in existence. In the year 1864 the society was dissolved and brought to a close. The testatrix died in 1866. On a bill filed by the trustees, the representative of the Attorney-General sought to argue that the gift was applicable *cy près*. He suggested that in this case the purposes of the society and of the gift could easily be ascertained and that they were charitable. Vice-Chancellor Page Wood refused to accede to this argument. At p. 528, he said that there was clear authority for the

proposition that " when a gift is made by will to a charity which has expired, it is as much a lapse as a gift to an individual who has expired."

That is the general rule and it will, of course, be applied without question in as simple a case. In practice, however, most cases are not so simple. The rule will not apply unless the charity has expired. It will equally not be applied if the gift is not worded with such particularity as to indicate that the testator had in mind as the object of his bounty a particular charitable institution and nothing else. Thus, in *Re Magrath* [1913] 2 Ch. 331, the legacy was one to " Queen's College Belfast " for the purpose of founding " a Magrath clinical scholarship for proficiency in reports of cases at the bedside, and to be open to medical students of the fourth year who shall be *bona fide* students at such college." This will had been made by Mrs. Magrath, the widow of one, Dr. Magrath, who had been closely connected with Queen's College, Belfast. The will was made in February, 1910, and confirmed by five later codicils. The testatrix did not die until 1912. Even before the will was made, there had been a reconstruction of universities in Ireland, under the Irish Universities Act, 1908. Thereunder, Queen's College, Belfast, had been dissolved on the 31st October, 1909. Its place was taken by " Queen's University of Belfast," a corporation incorporated by Royal Charter made under the Act which substantially carried on the same work as the former body in the same place. There was no evidence whether the testatrix knew what had been done in the reconstruction, though it seems very improbable that she did not. Lord Warrington said (p. 341) : " It is pretty obvious when one knows the facts that the intention of the testatrix was to found scholarships in connection with the two places in which her husband received his medical education." (A legacy was also given to University College, London, where Dr. Magrath had been.) He remarked, on the next page, that " if she knew what had taken place, the case becomes merely one of misdescription." The learned judge pointed out (at p. 344) that though there was no evidence that the testatrix knew what had been done, there was equally no reason to presume that she was ignorant, and that if she was not ignorant she knew the right name of the institution and had wrongly described it. Accordingly, he declared that the legacy was payable to Queen's University of Belfast.

This case, of course, is explicable on the ground that the charitable body named in the will had already ceased to exist at the date of the will. That being so, the court naturally had more latitude in construing the clause liberally, because to construe it literally was to assume that the testatrix was talking nonsense.

Different considerations applied in *Re Withall* [1932] 2 Ch. 236. The testatrix there made her will in 1924 and directed her trustees to pay the residue of her estate to the Margate Cottage Hospital. At that date such a body existed and the testatrix was a subscriber to its funds. In 1930, however, it was closed down and its entire staff and patients were transferred to a new hospital called the " Margate District and General Hospital," which had been built out of the proceeds of a public subscription. The accumulated funds of the old Cottage Hospital were in the hands of the trustees of the new hospital and were applied for its purposes. The transfer took place in July. The testatrix died in October without having altered her will. The question in the summons was, of course, what was to be done with her residuary estate. It could not be given to the new hospital on the same grounds as were applicable in *Re Magrath*, because there could be no question of misdescription. At the date of the will a charity existed with exactly the same name as the name in the will. Clauson, J., came to a rather curious conclusion. He held that the next of kin had no interest in the residue, and that the residue ought to be applied for the purposes of the Margate Cottage Hospital, which, of course, no longer existed. He refused to decide that the new hospital could be said in any way to retain the identity of the old hospital, but pointed out that since the funds of the old hospital were, rightly or wrongly, being applied for the purposes of the new hospital, the question of identity was academic.

There is also reported, as a footnote to *Re Withall, supra*, the case of *Re Watt*. In that case the testator made his will in 1925 and left part of his residue to the " Southwark Diocesan Society." At the date of the will there was no such society. There was a society called " The Southwark Diocesan and South London Church Fund," which often called itself " The Southwark Diocesan Fund " on receipts. Before the year 1904, there was a society called " The Rochester Diocesan Society," which had among its objects the promotion of church work in South London (which in those days was in the Diocese of Rochester). The testator had subscribed to this society. When the Diocese of Rochester was broken up in 1904 the Diocese of Southwark was carved out of it and the " Rochester Diocesan Society " changed its name to the Southwark Diocesan and South London Church Fund. The testator had gone on subscribing to the society under that name. At the beginning of 1929 the affairs of the society were taken over by another society called the " South London Church Fund and Southwark Diocesan Board of Finance." A few months later the testator died without having altered his will. Here, of course, the same problem arose as in *Re Withall, supra*, that is to say, the society in question had changed its name after the will and before the death of the testator ; but the question, of course, was complicated by the fact that the testator had named the society wrongly in the first place. Clauson, J., held that the gift failed, but the case went up to the Court of Appeal, where his judgment was reversed, and it was held that the South London Church Fund and Southwark Diocesan Board of Finance got the legacy. The gist of the judgment of the Court of Appeal is to be found in the words of Romer, L.J. : " On the facts of this case, which are peculiar and not likely to exist again, I think we are bound to arrive at the conclusion that the testator was intending to benefit not any particular society or body of persons, but a purpose, a charitable purpose, which some vague society appears to have carried on. While the constitution of the society was vague, there seems to have been no vagueness in the nature of the work " (at p. 246). It will be seen, therefore, that *Re Watt* really turned on the fact that the words of the will were wrong, and that the societies in question were all rather confused as to their constitutions.

Similar latitude would not be allowed where a charity is accurately described and its constitution is in no doubt. Thus, in *Re Rymer* [1894] 1 Ch. 19, the testator bequeathed £5,000 to the " Rector for the time being of St. Thomas's Seminary for the education of priests in the diocese of Westminster for the purposes of such seminary." At the date of the will there was an institution called St. Thomas's Seminary, and it was carried on at Hammersmith. It was for the education of priests for the Roman Catholic Diocese of Westminster. There was, therefore, no vagueness about the object of the charitable bequest, and there was no vagueness in the wording of the will. The will was made in 1883 and confirmed by codicils in 1890 and in May, 1893. In the meantime, however, it had become apparent to the persons concerned that the Hammersmith Seminary was too expensive to carry on. Accordingly, just before Lady Day, 1893, it was abolished. Such of the students as were ready for ordination were ordained and sent out into the world, the rest of the students were transferred in a body to a seminary near Birmingham. This seminary had been established by the Roman Catholic Bishop of Birmingham for the education of priests in the Roman Catholic dioceses of Westminster, Birmingham and others. The testator died in 1893, and it, of course, became necessary to decide what was to be done with

the £5,000. Chitty, J., held that the legacy had lapsed and fallen into residue. The Court of Appeal upheld his decision. The substance of the decision of the Court of Appeal is to be found in the judgment of Lindley, L.J. (at p. 34): "I will not read the words of this gift again; I have read them very often and studied them with care. I cannot arrive at the conclusion at which the appellant's counsel asked me to arrive, that this is in substance and in truth a bequest of £5,000 for the education of the priests in the diocese of Westminster. I do not think it is. It is a gift of £5,000 to a particular seminary for the purposes thereof and I do not think it is possible to get out of that . . . . The question arises, does that seminary exist? The answer is, it does not. Then you arrive at the result that there is a lapse; and if there is a lapse, is there anything in the doctrine of *cy près* to prevent the ordinary doctrine of lapse from applying? I think not." The gift was a perfectly clear one to a particular seminary, and the words "for the education of priests in the diocese of Westminster" were demonstrative of the particular seminary and not indicative of a general charitable intention.

Similar questions arise in cases where gifts are given for a particular charitable purpose and there is no prospect of that charitable purpose being carried out. If the gift is one for a general charitable purpose and a particular way of carrying it out is indicated, the failure of the particular way to materialise is not fatal. But if the purpose itself is particular, the failure of the purpose causes a lapse. Thus, in *Re Wilson* [1913] 1 Ch. 314, the testator gave a large sum of money for the establishment of a school in a particular place and laid down, with considerable thoroughness, the rules which were to govern the school. There was evidence that there was no reasonable chance that any such school could be started. Accordingly, having regard to the particularity of the will, Parker, J., held that the gift failed. Similarly, in *Re University of London Medical Sciences Institute Fund*, the testator bequeathed £25,000 to "The Institute of Medical Sciences Fund University of London." This fund had been started by voluntary contributions in the testator's lifetime with the object of carrying out a proposed scheme for the establishment of an institute of medical sciences. After the testator's death and after the legacy had been paid, the fund was wound up because the scheme had turned out to be impracticable. It was contended on behalf of the Attorney-General that there was a general charitable intention, and that, in spite of the lapse of the fund, the legacy ought to be applied *cy près*. The Court of Appeal came to the conclusion that on the wording of the will there was nothing approaching a general charitable purpose, but that "the gift is a gift for the particular institution contingent upon the birth of that institution" (at p. 9). The legacy was accordingly ordered to be repaid to the testator's executors. Finally, in *Re Packe* [1918] 1 Ch. 437, the testatrix gave to the Poor Clergy Relief Corporation an exceedingly undesirable cottage, known as "The Retreat," lying behind another row of cottages in the village of Strete, Devonshire. The testatrix also left to the same legatees £1,100, and directed them to keep up the cottage as a summer rest home for poor clergymen. The corporation did not fancy the bequest, as a caretaker would have been necessary to look after the cottage during the winter, and what with the cost of the caretaker and of the upkeep of an old building, there would have been less than nothing left out of the interest of the £1,100. Moreover, the cottage was five miles from the nearest railway station. Accordingly, they refused the bequest, and the question was whether it had to be applied *cy près*. No one else could be found to take the bequest. The whole scheme was, accordingly, impracticable. Neville, J., said that so far as was disclosed by the will, no one could say whether the testatrix had any intention of any sort beyond the intention that the particular charitable purpose which she expressed should be carried into effect (at p. 442). The gift, accordingly, lapsed. It will be seen that in all these cases a particular expression, in apt language, of a particular purpose is fatal to the validity of the gift, unless the particular purpose can be carried out exactly as the testator indicates. On the other hand, if the intention is vaguely expressed, there is a reasonable chance that the legacy will be valid even though the circumstances have changed.

Landlord and Tenant Notebook.

Effect of the Rent, etc., Restrictions Act, 1939, on New Mortgages.

A CORRESPONDENT has raised the question whether the Rent and Mortgage Interest Restrictions Act, 1939, restricts the calling in of mortgages created since it was passed. To answer this means to indulge in something like a "treasure hunt," which might be described as a series of sub-hunts, of which all but the last terminate when what was thought to be the quarry turns out to be new scent. For the legislation with which we are concerned is an outstanding example of "legislation by reference."

The first clue is undoubtedly s. 3 (1); and in order to do justice to the subject I shall have to set this out almost *in extenso*, and will use italics to indicate the presence of further clues. "Without prejudice to the operation of the two preceding sections . . . the *principal Acts*, as amended by the last preceding section, shall, subject to the provisions of this section, apply to every other dwelling-house of which the rateable value on the appropriate day did not exceed . . . and in relation to any such dwelling-house as aforesaid, not being a dwelling-house to which the principal Act applied immediately before the commencement of this Act, *the provisions of the Rent and Mortgage Interest Restrictions Acts*, 1920 *to* 1933, *set out* in the first column of the First Schedule to this Act shall have effect as if there were made in those provisions *the modifications prescribed by that Schedule*."

The two preceding sections are concerned with continuance generally and with a provision which affects tenancies only. The "principal Acts" will be one of the "other expressions" referred to at the end of s. 7 (1), which provides that these "have the same meanings as in the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933." Turning to the latter, we find it commences with (s. 1 (1)) "The Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925 (hereinafter referred to as the principal Acts)."

We now proceed to examine the effect of "subject to the provisions of this section"; but the outcome of our research is that the allusion is to certain exceptions, such as licensed houses, excluded by later subsections; and these are not, as such, the subject of the present inquiry.

When we come to "the provisions of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1933," and their modifications, we are nearer home. The 1920 Act, sometime "'the' principal Act," extended protection to mortgaged property by s. 12 (4): "Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses *to which this Act applies*, or any interest therein, except that it shall not apply . . ." Pausing there, we may turn to subs. (2) of the same section: "This Act shall apply to a house or part of a house let as a separate dwelling, where either the annual amount of the standard rent or the rateable value does not exceed," etc. If this were all, one could say that the 1939 Act, which never uses the word "mortgage," had no application to our subject at all; but this is where the next clue, the "modifications respectively prescribed," comes in, for we find against s. 12 of the 1920 Act "Subsection (2) shall not apply." Thus we are referred back to the main provision making rateable value on the appropriate day the test.

At this stage, then, the position is that, where the mortgaged property consists of or comprises one or more dwelling-houses of which the rateable value on the valuation

list did not exceed £100 if in the metropolitan police district or City of London, £75 if outside London, the 1939 Act applies to it.

But was there not, one may ask, something about decontrol of mortgages? Most of us remember the decontrol provisions of the 1923 Act, subsequently modified by what was to have been the final Act of 1933, again modified by that of 1938; but these referred to tenancies only. As regards mortgages, it was, in fact, the old "principal Act" itself, the 1920 Act, that dealt with these in what follows the "except that" cited above, viz.: "(*c*) to any mortgage which is created after the passing of this Act." But if any intending mortgagee thinks that that provision plus the absence of direct reference to mortgages in the 1939 statute means that he will be able to call in without restriction, he is wrong; the above-mentioned "modifications respectively prescribed" continue with "Paragraph (*c*) of subs. (4) shall not apply." I think that there now can be little doubt but that mortgages, though the word itself occurs only in the title, are governed by the provisions restricting calling in contained in the 1920 Act, namely, in s. 7. The section likewise restricts the exercise of rights of foreclosure and sale and "otherwise enforcing the security or recovering the principal money thereby secured."

This conclusion agrees with our correspondent's ideas on the position, but he goes on to submit that there are no reasonable grounds for interfering with the ordinary rights of parties (all well aware of the present conditions) to make whatever new mortgage contracts they may choose, and states that in practice the restriction has already been found to cause difficulty in obtaining mortgage advances which would otherwise readily be granted.

Now the functions of this "Notebook" do not normally include that of discussing what the law ought to be, and the only comment I can legitimately make on the submission is that, rightly or wrongly, the Legislature appears to incline more and more to the Barnum-like view that there are large numbers of citizens who experience an uncontrollable urge to sign their names on every dotted line they see, whether well aware of conditions obtaining at the time or not, and that they deserve to be protected from themselves. But it so happens that in the case of the Rent, etc., Restrictions Acts draftsmanship has been so poor that courts have been driven, more often than usual, to examine immediate and ultimate objects, so a few quotations from judgments may be in point. As McCardie, J., put it in *Read* v. *Goater* [1921] 1 K.B. 611, at p. 615: "This Act has not been drawn with artistic care, but the court must not give an interpretation of it based upon extreme niceties of construction. It is essential that, wherever possible, it should be construed in a broad, practical, common-sense manner so as to effect the intention of the Legislature."

Scrutton, L.J., referred again and again to the intention of the Legislature as gleaned from the "mischief to be remedied"; e.g., in *Mackworth* v. *Heilard* [1921] 2 K.B. 755, at p. 60: "It is common knowledge that when the Act was introduced in respect of small dwelling-houses the grievance that was to be met was that large numbers of tenants of small dwelling-houses were finding that their rent increased very rapidly and arbitrarily, and, owing to the shortgage of houses due to the war and other circumstances there was no competition to protect the tenant; the tenant practically had to pay what the landlord demanded or go into the street . . ." and in *Prout* v. *Hunter* [1924] 2 K.B. 736 (C.A.), at p. 742: "During the war, for reasons which it is not necessary to specify, the supply of houses became unequal to the demand, and the ordinary economic consequence followed that landlords were able to ask, and did ask, a much higher rent for their houses than was possible before the war. Great public feeling was aroused by the exorbitant demands for rent that were made and the ejectments for non-payment of it, with the result that Parliament passed the Rent Restriction Acts with the two-fold object: (1) of preventing the rent from being raised above the pre-war standard, and (2) preventing tenants from being turned out of their houses even if the term for which they had originally taken them had expired."

What applies to tenants, rent and ejectment would be equally applicable to mortgagors, interest and calling in or foreclosing or selling; so that in order to convince Parliament that restrictions should be relaxed in favour of mortgages made since 3rd September last, it will be necessary to show that the pre-decontrol conditions of the old legislation do not now obtain or else that it was wrong to interfere with the freedom of contract of those aware of them. On these matters I express no opinion.

Our County Court Letter.

SUBSIDY ON IRISH CATTLE.

In *Manton* v. *Malcolm*, recently heard at Northampton County Court, the claim was for £4 10s. as damages for breach of warranty. The plaintiff was a farmer, and his case was that on the 8th April, 1939, he agreed to buy eleven steers from the defendant for £169. A warranty was given that none of the steers was Irish, the significance of this being that, when the steers became fat beasts, they had to be graded before sale. The difference between the subsidy received in respect of English and Irish cattle was 2s. 6d. a cwt. The average weight of the beasts was 12 cwt., but three were Irish, and, on the basis of 30s. for each, the damages amounted to £4 10s. The defence was (1) that there was no transaction with the plaintiff; (2) alternatively, none of the steers was Irish; (3) if they were Irish, they were purchased by the defendant in Pembrokeshire as locally bred. The plaintiff's evidence of the warranty was corroborated by another farmer. His Honour Judge Donald Hurst observed that the second plea in the defence appeared to be inconsistent with the first. Judgment was given for the plaintiff, with costs.

GARNISHEE ORDER.

In a recent case at Walsall County Court (*Goodall* v. *London and Manchester Assurance Co., Ltd.*) the claim was for £22 1s. 6d., being a balance due from the garnishees to the plaintiff's son. At a previous hearing the plaintiff had claimed the repayment of £20, which had been lent by her to her son to enable him to secure an agency with the above company. Liability to repay had been disputed on the ground that the £20 had been a gift. The plaintiff, however, had obtained judgment for £20 and costs. In July, 1939, the judgment debtor had relinquished the agency and was subsequently called up with the territorials. He had since offered to pay £10 and the balance at 5s. a week for the duration of the war. His Honour Deputy-Judge Norris gave judgment for the whole amount, with costs.

TRESPASS BY SHEEP AND HENS.

In a recent case at Northampton County Court (*Greeves* v. *Lewis*) the claim was for £16 1s. as damages for trespass by the defendant's sheep. The counter-claim was for £49 13s. 4d. as damages for trespass by the plaintiff's hens, viz., £44 13s. 4d. for the loss of 20 quarters of wheat at 44s. 8d. a quarter and £5 for drilling, threshing and ploughing. The plaintiff's case was that he had had 20,000 broccoli plants in his market garden, covering five acres, in December, 1938. The plants were completely damaged by the defendant's sheep, whose footprints appeared in the snow. No complaint of damage by the plaintiff's hens was made until he complained about the defendant's sheep. The defendant's case was that, as shown by a sale plan, the obligation to fence rested on the plaintiff. It did not appear, however, whether the fencing conditions of the sale plan were inserted as a covenant in the

conveyances to the owners of the defendant's farm or the plaintiff's market garden. The defendant's farm comprised 127 acres, and he attributed the gaps in the hedge to trespassers. As many as seventy-eight of the plaintiff's hens had trespassed, and damaged the wheat. The defence to the counter-claim was that the plaintiff had never owned more than sixty fowls. The arable land, on which the hens had trespassed, was in poor heart when drilled, and should not have been planted with wheat. Crows had also eaten the wheat. It was submitted that an owner, such as the defendant, was bound to fence in his own animals. His Honour Judge Donald Hurst disallowed the plaintiff's claim for £1 11s., a valuer's fee, but held that the claim was otherwise well-founded. Judgment was therefore given on the claim for £15 and costs. The counter-claim was held to have been exaggerated, as the damage to the wheat, by the fowls' trespass, amounted to six quarters. Judgment was given on the counter-claim for £13 6s. and costs.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Solicitors' Defalcations.

Sir,—The letter which appears in your issue of the 16th March, signed "London Solicitor," is so long that I suppose it calls for a reply from me.

Taking the strong views he does on the recent efforts of The Law Society and the proposals in their recent report (which he politely describes as "antics" and "eye-wash" respectively), it is much to be regretted that he does not give his name and that he did not attend the meeting of members of the Society on the 23rd February. If he had done so, he would have heard all the points he mentions fully dealt with and answered. However, the proceedings are fairly fully reported in *The Law Society's Gazette* for March.

He mentions that the motion to adopt the Society's report was not passed unanimously. It is true; out of the meeting of about 800, the dissentients numbered seven. He complains that these proposals affecting the whole body of solicitors should have been passed at a meeting comprising only about 700. It was no fault of the Council that only 800 members attended, and I know no way of ascertaining the views of a large body of persons other than the holding of a meeting at which they are invited to express their views and to demand a poll if they disagree with the decision arrived at.

Incidentally, and as "London Solicitor" will learn if he reads the *Gazette*, although the report of the Council proposed suspending the operation of certain matters until after the war, this part of the report was deleted on an amendment adopted by a large majority.

RANDLE F. HOLME,
President, The Law Society.

Law Society's Hall,
Chancery Lane, W.C.2.
18th March.

Solicitors' Defalcations.

Sir,—May I, as another member of The Law Society unable to attend its recent meeting, give wholehearted support to the letter of "London Solicitor" appearing in your issue of 16th March.

I contribute the following additional observations:—

1. If The Law Society as a body would vigorously and publicly defend or assist solicitors against unjust attacks, instead of themselves attacking them, their membership would be more likely to increase.

2. Why does The Law Society continue to wash its dirty linen in public, thus confirming the loss of public confidence and driving business away from us into the hands of our competitors—banks, insurance companies and accountants?

3. Why does not the Law Society exercise its power (or seek further power) to send an official of its own nomination to see that solicitors keep proper books?

4. We (at all events in the provinces) have a pretty shrewd idea which members of the profession are undesirable for one reason or another. Why not give us the right of "balloting" them out of the profession?

Liverpool, 2.
18th March.

LIVERPOOL SOLICITOR.

Reviews.

The Excess Profits Tax. By H. E. SEED, A.C.A., A.S.A.A. 1940. Demy 8vo. pp. xix and (with Index) 188. London: Gee & Co. (Publishers), Ltd. Price 10s. 6d. net.

The excess profits tax is in many ways more burdensome on the taxpayer than the excess profits duty in the last war. The rate is high, viz., three-fifths of profits in excess of the standard, and there is no right to a "percentage standard" in the case of trades or businesses commenced before the 1st July, 1936. Having had experience of taxation problems under earlier legislation, the author has written a practical exposition of a complex subject. Reference to statutory provisions is facilitated by the inclusion, in the appendix, of Pt. III and the Seventh Schedule of the Finance (No. 2) Act, 1939, and relevant extracts from other Acts.

Books Received.

Mews' Annual Digest of English Case Law. Second Edition. Fifteenth Annual Supplement containing the cases reported in 1939. By G. T. WHITFIELD HAYES, Barrister-at-Law. Royal 8vo. pp. xxi and 449. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Price £1 net.

Emergency Police Law. An Arrangement of Law, Orders and Regulations for Emergency Purposes. By CECIL C. H. MORIARTY, C.B.E., LL.D., Chief Constable of Birmingham, and JAMES WHITESIDE, Clerk to the Justices of Exeter. 1940. Crown 8vo. pp. xxiii and (with Index) 259. London: Butterworth & Co. (Publishers), Ltd. Price 4s. net.

Tax Cases. Vol. XXII. Part IX. 1940. London: H.M. Stationery Office. Price 1s. net.

Latey's Law and Practice in Divorce and Matrimonial Causes. By WILLIAM LATEY, M.B.E., of the Middle Temple, Barrister-at-Law, and D. PERRONET REES, of the Divorce Registry. Twelfth Edition. 1940. Demy 8vo. pp. xcv and (with Index) 1279. London: Sweet & Maxwell, Ltd. Price £3 3s. net.

Obituary.

MR. G. W. RANDS.

Mr. George William Rands, solicitor, of Messrs. Geo. and G. W. Rands, solicitors, of Northampton, died during last week-end at the age of eighty-seven. Mr. Rands was Northampton's oldest solicitor and continued to work at his office until a few weeks ago. He was admitted a solicitor in 1874 and was Registrar of the Northampton Borough Court of Record.

The B.B.C. announces that on the 20th April at 6.30 p.m. in the programme: "Can I Help You," a lawyer will talk about the changes made in the law since war began as they affect our everyday lives.

Leicestershire Quarter Sessions will be held at The Castle of Leicester on Tuesday, 2nd April, at 10.30 a.m. The Chairman has decided that in view of the present emergency it would be inadvisable to hold the usual quarter sessions dinner.

To-day and Yesterday.

LEGAL CALENDAR.

25 MARCH.—At Aberconway in Carnarvonshire, on the 25th March, 1582, was born John Williams, the youngest of the five sons of Edmund Williams, a gentleman of ancient Welsh family, so ancient that its genealogy was supposed to be traceable through Llewellyn, King Arthur and Caractacus to Adam. The fact that he knew more Latin and Greek than English when he went to the University tended to throw him rather among books than companions. He is said to have formed such a habit of industry as only to need three hours sleep in twenty-four. He became Archbishop of York and succeeded Bacon in the tenure of the Great Seal, being Lord Keeper from 1621 to 1625.

26 MARCH.—Dr. Richard Bentley is distinguished for two things. He was one of the greatest scholars of his time. He was also cantankerous and despotic beyond belief, a sort of scholastic Hitler. His personal tyranny as Master of Trinity College, Cambridge, plunged that venerable institution for years into a sort of state of civil war. One episode of the strife was that in 1718 the University deprived him of his degrees, but on the 26th March, 1724, they were restored under legal compulsion. Afterwards when the judges were at Trinity Lodge one of them said to him: "You have not yet thanked us for what we have done for you." He answered: "What am I to thank you for? Is it only for doing me justice after a long protracted law suit? Had you indeed restored me at once to my rights I might have expressed my obligations, but such have been your delays that if I had not been an economist in my earlier years I must have been ruined by the pursuit of justice."

27 MARCH.—On the 27th March, 1821, Joseph Kitsall and three other young men were hanged outside Newgate Gaol. He had been a footman in the service of Mr. Joseph Chitty, the celebrated barrister and founder of a long legal line. His service had lasted only a fortnight, at the end of which period he had absconded with £70 worth of plate. For this he suffered death.

28 MARCH.—William Davison, Queen Elizabeth's secretary, was sentenced on the 28th March, 1587, to imprisonment during the royal pleasure.

29 MARCH.—On the 29th March, 1780, John Williams, an officer of Marines, and James Stoneham, a boatswain's mate, were tried at the Old Bailey for mutiny on board the "Eagle," a privateer. According to the evidence of the First Lieutenant, the rising had occurred on Christmas Day, when part of the crew had taken up arms, led by Williams, but had been subdued when the Captain had knocked him down. The defence was that the incident was merely a protest against the conduct of the Captain, who, it was said, had violated his privateering commission by robbing every small ship he met with, whether friendly or otherwise. The prisoners were found guilty, with a strong recommendation to mercy.

30 MARCH.—The diary of Mr. Justice Rokeby contains much evidence of his deep piety. Shortly before he became a judge he wrote: "This 30th day of March, 1689, I have received the preceding covenant and dedication of myself unto my God and I do now humbly and heartily renew the same. Oh Lord, I most earnestly beg of Thee to pardon all my unsteadiness in my covenant with Thee and give me strength to walk more steadfastly, faithfully and rigorously with Thee for all the remaining part of my short and frail life."

31 MARCH.—On the 31st March, 1762, Robert Kemp, a drover, was convicted at Southwark Quarter Sessions of wilfully driving oxen against a gentleman's coach in the High Street, "by which means the horn of one of the said oxen pierced the panel of the said coach to the great terror of the ladies that were in it." He was fined £10 and ordered to pay £6 13s. 4d. damages, which the gentleman gave to the poor.

THE WEEK'S PERSONALITY.

William Davison should stand in our history as one of the classical examples of a scapegoat. On the 8th February, 1587, Mary Queen of Scots was executed, and no one doubted that her cousin Elizabeth, who had signed her death warrant, was delighted to have her out of the way. On the 28th March, Davison, the secretary of the English Queen, was brought before the Star Chamber, charged with misprision and contempt in having the warrant carried into effect. He wept, declaring that he had acted "sincerely, soundly and honestly," but Lord Chief Justice Wray blandly describing his indiscreet zeal as "*bonum sed non bene*," sentenced him to a fine of 10,000 marks and imprisonment in the Tower during the royal pleasure. There he remained till 1589. There is no doubt that Elizabeth in this matter was one who "would not play false and yet would wrongly win," and had tried to escape the odium of the responsibility for Mary's death by giving her secretary instructions deliberately vague and equivocal. Even after his release rehabilitation was refused him, and, reduced to great poverty, he retired to Stepney. He survived till the reign of James I, who did something to relieve him. His death occurred in 1608.

THE JUDGE'S GUARD.

The incursion of the Irish bomb planters into the national life has brought a new touch of realism to the traditional guarding of the judges of assize, and the fixed bayonet escort, which looked after Mr. Justice Humphreys at Lewes recently, received a good deal of attention in the press. The javelin men, who finally faded away not so very long ago, seem rather less picturesquely superfluous now that we can no longer look back with a cultured superiority on the dangerous living of our rude forefathers, when it was a matter of very practical urgency for the High Sheriff to provide armed protection for the King's justices. In all the circumstances it might be a good idea to release the police for their normal duties by reviving the institution of the javelin men who were generally sturdy and capable old soldiers. From another point of view it would be no wasteful extravagance, since human beings are what they are, to renew the pageantry which in the assize towns used to make the law alive, personal and impressive. The javelin men of Chester, with their long spears, claimed continuity of tradition with the 23rd Roman Legion. Those of Lancaster, armed with formidable looking axes, used to stand sentry within the court two at a time, relief coming every hour. Let them all return.

USES FOR JAVELIN MEN.

The javelin men at Oakham once saved Mr. Justice Maule from suffocation. Finding the court intolerably hot he had ordered the windows to be opened only to be told that they were not made to open. He immediately ordered the guards to poke their weapons through the glass and the fresh air was let in at the cost of smashing thirty-six panes. Some used to think that the appearance of these attendants in their mediæval costumes was rather too theatrical and one versifier wrote:—

"Here come the men with javelins
All sparkling in the light,
They look almost like warriors
On Astley's stage at night."

That recalls a curious episode in New Zealand many years ago when an English barrister appointed to the bench there severely reprimanded a sheriff for providing no javelin men at the assizes. Next time that official paraded half a dozen theatrical supers in tin helmets and breastplates with halberds of lath and tinfoil.

Notes of Cases.

Court of Appeal.

Wilson *v.* **London Midland and Scottish Railway Co.**

Greene, M.R., MacKinnon and Clauson, L.JJ.
28th February, 1940.

RAILWAY—POWER OF DIRECTORS—ISSUE OF PROXIES TO HOLDERS OF £2,500 OF STOCK OR MORE—DIRECTORS ALSO DIRECTORS OF COMPANIES TRADING WITH THE RAILWAY—COMPANIES CLAUSES (CONSOLIDATION) ACT, 1845 (8 & 9 Vict., c. 16), ss. 64, 65, 76, 85, 87.

Appeal from Simonds, J. (84 SOL. J. 60).

In this action the plaintiff, a stockholder, claimed that the directors of the defendant company had acted illegally and *ultra vires* in various respects. He claimed, *inter alia*, first, that the defendant company was using its powers and spending its money in issuing stamped proxies with the names of certain directors inserted, and with stamped covers for return, and without the indication of any policy or action to support or enforce, together with a letter asking for their return; and that, in issuing such proxies, the smaller stockholders were ignored and did not participate in the same privilege to record their vote, and that that was in contravention of ss. 64, 65 and 76 of the Companies Clauses (Consolidation) Act, 1845. Secondly, that the plaintiff claimed a declaration that directors of the railway company, who were also directors and trustees of other incorporated joint stock companies trading directly and indirectly with the railway company, were contravening the provisions of the defendant company's special Acts and s. 85 of the Companies Clauses (Consolidation) Act, 1845. Simonds, J., dismissed the action on both points. The plaintiff appealed.

GREENE, M.R., in dismissing the appeal on both points, said with regard to the first, the plaintiff's contention was that all stockholders should be treated alike, and that, if stamped proxies were issued to some of the stockholders, they should be issued to all. This principle had no legal foundation. This was not a case where, for the purpose of a controversy to be fought out at a meeting, the director selected a particular class of stockholder, so as to influence the voting. The course they adopted was adopted as a matter of practice and there was nothing sinister about it. The course was taken in order to secure a quorum and avoid waste of time and money. He said with regard to the second point, the appellant had put before the court a number of considerations which he contended showed that it was undesirable that the practice of which he was complaining should continue. It was not the business of the court to consider questions of policy. Provided that a public company was doing what the law permitted and not doing what the law forbade, all matters of policy must be dealt with by the ordinary internal machinery of the company without interference from the court. If the appellant considered that the policy being followed was not a good one, he should try to get it changed, but it was not a matter within the competence of the court.

COUNSEL: *Harman*, K.C., and *Andrewes Uthwatt*, for the company.

SOLICITOR: *Alexander Eddy.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Appeals from County Courts.

Friis *v.* **Paramount Bagwash Co., Ltd.**

Slesser, Luxmoore and Goddard, L.JJ. 12th February, 1940.

COSTS—JURISDICTION OF COUNTY COURT JUDGE—ORDER FOR PAYMENT INTO COURT OF SUM AS SECURITY—ACTION TO BE DISMISSED WITH COSTS IN DEFAULT—SUM NOT PAID IN—WHETHER FINAL ORDER—POWER TO MAKE FURTHER ORDER AS TO COSTS—REMITTED ACTION—COUNTY COURTS ACT, 1934 (24 & 25 Geo. 5, c. 53), ss. 47, 73.

Appeal from Woolwich County Court.

The plaintiff issued a specially indorsed writ claiming from the defendants an amount which he alleged was due to him for professional services rendered to the defendants as an accountant. The defendants obtained leave to defend the action, which was remitted to the county court. In the county court the defendants put in a counter-claim for an amount for which they alleged that the plaintiff had failed to account and for the return of certain books, and damages for their detention. After the plaintiff had given evidence the hearing was adjourned. On the adjourned hearing the plaintiff was not ready to proceed and by agreement an order was made that the hearing be further adjourned; that the costs thrown away be the defendants' in any event, £10 to be paid into court by the plaintiff within fourteen days as security for the costs of the adjournment; that if those costs exceeded £10 the plaintiff should make up the difference, but if less the difference should be allowed to the plaintiff; that if the sum was not paid into court within fourteen days the action be dismissed with costs and the counter-claim dismissed without costs; and that the books be returned to the defendants forthwith without prejudice to the plaintiff's rights. The plaintiff did not pay the sum into court. Later, the defendants applied for an order with respect to the outstanding costs and an order was made dealing in detail with the costs of the whole action. The plaintiff appealed on the ground that the first order was, in the event which happened, a final order and that the county court judge had no jurisdiction to make a further order. The defendants contended that since the action was a remitted action the judge had a discretion under s. 73 of the County Courts Act, 1934, to make a further order.

SLESSER, L.J., delivering the reserved judgment of the court allowing the appeal, said that the plaintiff's contention that the first order constituted a final judgment and that the county court judge had no jurisdiction to make a further order was well founded. Under the first order the registrar was bound to tax the costs in the same way as had been directed by the first paragraph of the second order. Under s. 47 of the County Courts Act, 1934, if a plaintiff brought an action in the High Court which could have been brought in the county court, he could not get more than county court costs, but that section did not deal with the costs of a successful defendant, who got High Court costs. No special order was required. Under s. 73 the county court had a general power over the costs of a remitted action. But if a defendant was successful and was awarded costs, he was entitled to all the costs to which he had been put, subject to taxation. He was therefore entitled, without more, to tax on the High Court scale down to the date of remission and on the appropriate county court scale thereafter. The first order in the present case was therefore a final order and the later application was not only unnecessary but was one on which the judge had no jurisdiction to make an order. The appeal therefore succeeded.

COUNSEL: *E. M. Hoy; Astell Burt.*

SOLICITORS: *Morris & Son; Wedlake, Letts & Birds.*

[Reported by H. A. PALMER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Benjamin Electric, Ltd. *v.* **Veritys, Ltd.**

Farwell, J. 23rd February, 1940.

PATENTS AND DESIGNS—REGISTERED DESIGN—ARTICLE INFRINGING DESIGN—"TO PUBLISH OR EXPOSE THE ARTICLE FOR SALE" UNLAWFUL—SALE OF ARTICLE—NO EVIDENCE OF PUBLICATION OR EXPOSURE—OFFENCE—PATENTS AND DESIGNS ACT, 1907 (7 Edw. 7, c. 29), s. 60, subs. (1).

The plaintiff and defendant companies both carried on the business of manufacturers and dealers in electric fittings. The plaintiffs were the registered proprietors of design No. 752,957,

being a design for a reflector. The design was registered on the 11th March, 1930, Class 1. In this action the plaintiffs sought an injunction to restrain the defendants from infringing their design. They alleged that the defendant company had infringed the copyright of the registered design. The defendants denied the infringement. In their statement of claim the plaintiffs relied on certain sales by the defendants. The Patents and Designs Act, 1907, s. 60, subs. (1), provides: "During the existence of copyright in any design, it shall not be lawful for any person— . . . (*b*) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article."

FARWELL, J., began by holding that the defendants' reflector was an infringement of the plaintiffs' design. He then said, that being so, the plaintiffs were *prima facie* entitled to have their design protected. The defendants, however, contended that, although at the time of the sales relied upon in the pleadings, they knew of the registration, they had committed no offence within the Patents and Designs Act, 1907, because what the Act precludes was not simply a sale but an exposure for sale. They said that the plaintiffs had not proved that the defendants, after they knew of the registered design, published or exposed for sale the infringing article or caused it to be so published or exposed. They relied upon *Bothamley* v. *Jolly* [1915] 3 K.B. 425, a case under the Public Health Acts relating to diseased meat. That decision was of no assistance in considering s. 60, subs. (1). The sale of an article, with the knowledge that it infringed a registered design, was an offence and came within the scope of the section, although there was no independent evidence that there had been any actual publication or exposure for sale.

COUNSEL: *Lloyd-Jacob; J. Mould.*

SOLICITORS: *Caporn & Campbell*, for *Wansbroughs, Robinson, Tayler & Taylor*, Bristol; *Peacock & Goddard*, for *Shakespeare and Vernon*, Birmingham.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

High Court—King's Bench Division.

Boarland *v.* Pirie, Appleton & Co., Ltd.; Stemco, Ltd. *v.* Hyett.

Wrottesley, J. 23rd January, 1940.

REVENUE — INCOME TAX — DEDUCTIONS — DEPRECIATION — FACTORY OCCUPIED BY LESSEES—STRICT COVENANTS TO REPAIR—"WHOLE BURDEN OF ANY DEPRECIATION"—WHETHER OCCUPIER ENTITLED TO RELIEF—FINANCE ACT, 1937 (1 Edw. 8 & 1 Geo. 6, c. 54), s. 15.

Appeals by case stated from decisions of the Commissioners for the Special Purposes of the Income Tax Acts.

BOARLAND *v.* PIRIE, APPLETON & CO., LTD.

The respondent company appealed to the Special Commissioners against an additional assessment of £231 to income tax for the year ending the 5th April, 1938, made under Sched. D to the Income Tax Act, 1918. The company had previously been granted an allowance of that amount under s. 15 of the Finance Act, 1937, in respect of the premises in question in this appeal. The company were lessees of the premises, which came within s. 15 (1). By the lease the company covenanted "to maintain the whole subjects let in good condition and repair . . . and for that purpose timeously to execute all . . . repairs . . . required." The company were not to be liable for damage arising to the buildings through actual subsidence and general failure of structure. It was contended for the company that, by virtue of the covenants to repair contained in the lease, the whole of the burden of any depreciation in the premises fell on the company, that they were accordingly entitled to relief under s. 15 of the Act of 1937, and that the additional assessment should therefore be discharged. Reference was made to *Napier* v. *Ferrier* (9 D. 1354) and *Allan* v. *Robertson's Trustees* (18 R. 932). It was contended for the Crown that the whole burden of any depreciation of the premises did not fall on the company. Reference was made to *Lister* v. *Lane* [1893] 2 Q.B. 212; *Anstruther-Gough-Calthorpe* v. *McOscar* [1924] 1 K.B. 716; and *Turner's Trustees* v. *Steel* (2 F. 363). The Commissioners decided in favour of the company and the Crown now appealed.

STEMCO, LTD. v. HYETT.

Stemco, Ltd., appealed to the Commissioners for the Special Purposes of the Income Tax Acts against assessments under Case I of Sched. D to the Act of 1918, made on them for the years ending the 5th April, 1938 and 1939. The company, who carried on the business of manufacturing chemists, leased certain premises with their heating apparatus and the boiler installation. The lease contained a covenant by the lessees well and substantially to repair the demised premises with their various appurtenances. The lessors for their part covenanted to keep the heating apparatus and boilers in good condition. The lease also conferred on the lessees an option to purchase the premises at a specified price to be reduced by an allowance for depreciation at 2½ per cent. a year on the value of the buildings and plant. The option was not exercised. The contentions of the parties were similar to those in *Boarland* v. *Pirie, Appleton & Co., Ltd.* The Special Commissioners having decided in favour of the Crown on the ground that, as the lessors had covenanted to maintain the heating apparatus and boilers, the whole burden of the depreciation of the premises did not fall on the lessees, the company now appealed. By s. 15 (1) the owner-occupier of premises such as factories is allowed to deduct from his profits chargeable under Case I of Sched. D to the Income Tax Act, 1918, specified amounts in respect of depreciation of the premises. By s. 15 (5) "a person occupying any premises as the tenant . . . shall be treated for the purposes of this section as . . . the owner . . . if, under the covenants to repair . . . in the lease . . . the whole of the burden of any depreciation of the premises falls upon him."

WROTTESLEY, J., said that it was agreed that, if the phrase "the whole of the burden of any depreciation of the premises" in s. 15 (5) were used in its literal and common-sense meaning, a tenant, however wide or strict the covenants to repair in the lease, did not bear such a burden. However faithfully he might comply with the strict repairing covenants, there was a continual wearing-out of the fabric in progress for which he was not rendered liable during or at the end of the lease. That wearing-out was causing a fall in value which was what was commonly meant by "depreciation." It was argued for the companies that there never were such things as covenants to repair which imposed on the tenant the whole burden of the depreciation in the literal sense. Even so, he (his lordship) did not see how he could interpret "the whole of the burden of any depreciation" as not carrying the ordinary meaning just because the usual form of lease did not entitle the present-day lessee to relief. The fact that subss. (2) and (3) of s. 15 clearly aimed at relieving those who occupied premises subject to excessive vibration was no reason why a tenant whose factory was more costly to repair because of unusual vibration should be allowed to deduct from his profits not merely the extra costs of such repair, but also the resulting fall in the value of the factory. The extra cost of repair could already be deducted without recourse to s. 15. The eventual decrease in value did not fall on the lessee. That decrease might be a good reason for reduction of rent, but it did not justify a reduction in the tenant's income tax. Those who desired the benefit of s. 15 (5) must first accept the owner-occupier's burden, and provision to that effect could no doubt be made by appropriate words in a lease. As to the first case under review, the expression "general failure of structure" covered not only a hidden defect, but also the decay taking place in an old fabric. Accordingly the lease expressly protected the lessees from depreciation by natural decay, so that they were not entitled to relief under s. 15 (5).

In the case of *Stemco, Ltd.*, the lease clearly excluded the boilers and heating apparatus from the strict repairing covenants in respect of the premises generally. While the exception seemed trifling, it yet showed that the lessee company did not bear "the whole of the burden of any depreciation." That company also, therefore, were not entitled to relief under the subsection.

COUNSEL: *Bucher* (for Pirie, Appleton & Co.): *Vaisey*, K.C., and *Scrimgeour*; *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. P. Hills*.

SOLICITORS: *Richards, Butler & Co.*; *Piesse & Sons*; *The Solicitor of Inland Revenue*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* **Cronin.**

Charles, Humphreys and Tucker, JJ.
26th February, 1940.

CRIMINAL LAW—PROCEDURE—TRIAL AT QUARTER SESSIONS BEFORE DEPUTY RECORDER NOT DULY QUALIFIED—TRIAL VOID *ab initio*.

Appeal from a conviction at Bury St. Edmunds Borough Sessions.

The appellant was convicted of dangerous driving on 31st January, 1940, and sentenced to nine months' imprisonment, with five months' disqualification for holding a driving licence. The trial took place before Sir Francis Dunnell, who was purporting to act as Deputy Recorder of Bury St. Edmunds. The Recorder of Bury St. Edmunds Borough Sessions had been unable to appear at the sessions, having been unavoidably detained by extremely severe weather. Accordingly, in writing under his own hand, he appointed as his deputy Sir Francis Dunnell, who was the chairman of the West Suffolk Quarter Sessions, that course being agreed to by all parties. In fact, Sir Francis Dunnell was not, and never had been, a barrister, and accordingly was not eligible for appointment as a Recorder's deputy, such an appointment depending on s. 166 (1) of the Municipal Corporations Act, 1882. The present appeal was accordingly brought. It was contended for the appellant that the proper course for the court was to quash the conviction, and that a writ of *venire de novo* was by the nature of its terms not apt in the circumstances. It was contended for the Crown, reference being made to s. 237 of the Act of 1882, that the proceedings at quarter sessions were valid, and that the appeal should be dismissed.

CHARLES, J., giving the judgment of the court, said that it was plain that, in view of the error which had been made, the court was never so constituted as to be empowered to try any one at all for anything; and the proceedings were indeed void *ab initio*. The question was, therefore, what was the proper course to take in order that the unfortunate mistake should be remedied. His lordship referred to *R.* v. *Crane* [1920] 3 K.B. 236 (on appeal to the House of Lords [1921] 2 A.C. 299), and said that the position was the same as in that case: the court therefore proposed to take the same course as was there taken by the Lord Chief Justice, Lord Reading, and specifically approved by the House of Lords. The court would therefore order that the appeal should be allowed, that the conviction should be set aside and annulled, and that the appellant should appear at Bury St. Edmunds Borough Sessions to answer the indictment against him.

Counsel for the appellant having applied that the trial might be held at a different place on the ground that Bury St. Edmunds was a small town and that the case against Cronin had excited great interest, Charles, J., said that, on the application of the appellant, assented to on behalf of the Crown, and only for those reasons, the court were prepared to allow the case to be tried at Ipswich Borough Quarter Sessions.

COUNSEL: *Boyd-Carpenter*; *Cope Morgan*.

SOLICITORS: *The Registrar of the Court of Criminal Appeal*; *Partridge & Wilson*, Bury St. Edmunds.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Societies.

The Law Society's School of Law.

Copies of the time-table for the Summer Term, 1940, can be obtained on application to the Principal's Secretary.

The Principal (Dr. G. R. Y. Radcliffe) will be in his room to advise students on their work on Monday, 1st April, from 10.30 a.m. to 12.30 p.m. and from 2 p.m. to 4.30 p.m.

The first lectures will be held on 3rd April.

For Intermediate students there will be courses on (i) The Courts of Justice, (ii) The Law of Property in Land (Part II), (iii) The Law of Tort, (iv) Accounts and Book-keeping, and (v) Trust Accounts. There will also be courses on (i) Roman Law (Part II) and (ii) Criminal Law and the Elements of Criminal Procedure, for Intermediate LL.B. students.

The Final subjects on the time-table are (i) Criminal Law and the Elements of Criminal Procedure, (ii) Property and Conveyancing and Bills of Sale, (iii) Procedure in the King's Bench Division and in County Courts.

Parliamentary News.

House of Commons.

FOREIGN INCOME (TAXATION).

MR. SPENS asked the Chancellor of the Exchequer whether he is aware that the requisitioning of foreign balances and securities under the Defence (Finance) Regulations may, in certain cases, result in the taxation of income which otherwise might not have been taxable; and what steps he proposes to take to relieve this hardship?

SIR J. SIMON: I am aware that a hardship may arise as regards income tax and surtax in relation to such foreign income as would not be chargeable to income tax unless remitted to the United Kingdom, by reason of the fact that the operation of the Defence (Finance) Regulations may result in the compulsory remittance to the United Kingdom of income which might otherwise have been left abroad and the consequent taxation in some cases of income which would otherwise not have been taxable. In order to meet the taxation hardship that might thus be caused it is proposed to deal with these cases on the following lines:—

(*a*) Assessments will be made, in accordance with the relevant income tax provisions, on the basis of the total remittances to this country, including the amount of any consideration moneys received from the Treasury under the regulations.

(*b*) The Board of Inland Revenue will defer collection of the tax applicable to such amount (not exceeding the aggregate of the consideration moneys received from the Treasury), as the taxpayer shows has not been expended or used in the United Kingdom and remains available, either in a specified bank account or in identified investments, for remittance abroad in conformity with the regulations.

(*c*) Any portion of the consideration moneys which is shown to have been remitted abroad, either while the regulations continue in force or within six months of the expiry of the regulations, will be treated for income tax purposes as if it had not been remitted to the United Kingdom, and the amount of the tax collectable will be reduced accordingly.

Any person wishing to avail himself of these arrangements should, when making his annual income tax return, indicate the amount of consideration moneys included therein in respect of which he claims that collection of tax should be deferred, and specify the bank account or investment in which the amount is held. In the meantime inquiries as to the application of the arrangements to particular cases and as to the procedure to be followed should be addressed to the Secretary, Board of Inland Revenue, Somerset House. [20th March.

MR. ALFRED DODS, MR. ARTHUR BOCKETT and MR. ALFRED DANVERS BAYLIFFE, of Messrs. Smith, Rundell, Dods and Bockett, solicitors, of 9, John Street, Bedford Row, London, W.C.1, have been appointed London Deputy for the Under-Sheriff of Glamorgan, London Deputy for the Under-Sheriff of Carmarthen and London Deputy for the Under-Sheriff of Pembrokeshire respectively. Mr. Dods was admitted a solicitor in 1896, Mr. Bockett in 1906 and Mr. Bayliffe in 1897.

Rules and Orders.

S.R. & O., 1940, No. 395/L.5.

COURTS (EMERGENCY POWERS)

THE COUNTY COURT (EMERGENCY POWERS) (No. 1) RULES, 1940. DATED MARCH 15, 1940.

I, Thomas Walker Hobart Viscount Caldecote, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by section 2 of the Courts (Emergency Powers) Act, 1940,* and of all other powers enabling me in this behalf, Do hereby make the following Rules :—

1. In these Rules a Rule referred to by number means the Rule so numbered in, and "Schedule" means the Schedule to, the County Court (Emergency Powers) Rules, 1939,† as amended by the County Court (Emergency Powers) (No. 2) Rules, 1939.‡

2. The following Rule shall be substituted for Rule 8 :—

"8. *Notice of application may be served with summons.*]—(1) A plaintiff commencing an action to which sub-section (1) or subsection (3) applies may include in the præcipe a statement that he desires a notice under the Act, to be served with the summons.

(2) Where such a statement is contained in the præcipe, the registrar shall annex to the summons a notice to the effect of Form No. 1 in the case of a default action or Form No. 2 in the case of an ordinary action, and the notice shall be served on the defendant with the summons, and the provisions of Order VIII shall apply to the service of the notice as they apply to the service of the summons to which the notice is annexed, subject to the modification that it shall be a sufficient compliance with the requirements of Order VIII as to indorsement if the indorsement on the summons shows that the facts stated therein apply also to the notice.

(3) Where in any such action a notice has been served with a summons under this Rule, then—

(*a*) if judgment is entered in default under Order X, Rule 2, the plaintiff may apply *ex parte* for leave to proceed ;

(*b*) if judgment is given or entered for the plaintiff otherwise than as aforesaid, the plaintiff may apply for leave to proceed at the time when judgment is given or entered without further notice to the defendant, or at any subsequent time on notice under Order XIII, Rule 1, so however that the notice shall be served not less than 4 clear days before the day fixed for the hearing of the application.

(4) This Rule shall apply to a matter as it applies to an action, with the modification that the statement mentioned in paragraph (1) of this Rule shall be filed with the originating process instead of being included in a præcipe."

3.—(1) In paragraph (1) of Rule 9, the following words shall be substituted for the words "In an action or matter to which sub-section (1) or sub-section (2) applies" :—

"Where in an action or matter to which subsection (1) or subsection (2) applies no notice has been served with the originating process under the last preceding Rule,".

(2) In paragraph (2) of Rule 9, after the words "A notice under this Rule," there shall be inserted the words :—

"shall be served not less than 4 clear days before the day fixed for the hearing, and"

(3) The following words shall be inserted after the word "registrar" in paragraph (3) (*b*) of Rule 9 :—

"of the court for the district in which the notice is to be served."

(4) In paragraph (3) (*c*) of Rule 9 the words "in relation to a judgment or order for the recovery of possession of premises in default of payment of rent" shall be omitted.

(5) Paragraph (7) of Rule 9 shall be omitted.

(6) The following marginal note shall be substituted for the marginal note to Rule 9 :—

"Notice of application in course of proceedings."

4.—(1) In paragraph (3) of Rule 16A—

(*a*) the following words shall be substituted for the words from the beginning of the paragraph to the words "under that Rule" :—

"The provisions of Rule 8 and of paragraphs (2) to (5) of Rule 9 shall apply to the service of a notice to the effect of Form No. 10 as they apply respectively to the service of a notice to the effect of Form No. 2 and Form No. 3 : " ;

(*b*) the following words shall be inserted after the word "registrar" in the proviso :—

"referred to in Rule 9 (3) (*b*)."

(2) The following paragraph shall be added to Rule 16A :—

"(6) Where, since the commencement of the Act—

(*a*) a mortgagor has voluntarily given up possession or has surrendered possession of the mortgaged land to the mortgagee, or

(*b*) the mortgagee has taken possession of the mortgaged land with the leave of the court under the Act, or

(*c*) the court has given leave under the Act to enforce an order for possession of the mortgaged land,

the court may dispense with the service of notice of an application under subsection (2) (*a*) (iv) for leave to realise the security by selling the land."

5.—(1) The following paragraph shall be added at the end of Rule 16 :—

"(6) An order giving leave to distrain shall be to the effect of Form No. 12."

(2) The following Form shall be added to the Schedule and shall stand as Form No. 12 :—

"12.

ORDER ON ORIGINATING APPLICATION FOR LEAVE TO DISTRAIN.

In the County Court.

No. of (Seal).

In the matter of the Courts (Emergency Powers) Act, 1939

and

[In the matter of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939]

(*strike out if not applicable*)

and

In the matter of [*description of premises*]

Between

Applicant

and

Respondent

Upon hearing the application of [*add, if so, and* upon hearing the respondent].

It is ordered that notwithstanding the provisions of section 1 (2) of the Courts (Emergency Powers) Act, 1939 [and section 6 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920,] (*strike out if not applicable*) the applicant be at liberty to levy a distress for rent amounting to £ : : due from the respondent to him on premises situate at [*here add conditions, if any*].

And it is ordered that the applicant be allowed the sum of £ : : for costs on this application, and that the respondent do pay the said sum to the applicant on or before the day of , 19 .

Registrar.

To the Respondent."

6. The following Rule shall be inserted after Rule 16A :—

"*Leave under Section 1 generally.*

16B. *Enemy respondent*].—Where a respondent to an application under section 1 is an enemy within the meaning of the Trading with the Enemy Act, 1939, the court may dispense with the service of notice of the application on that respondent."

7. These Rules may be cited as the County Court (Emergency Powers) (No. 1) Rules, 1940, and shall come into operation on the 1st day of April, 1940.

Dated this 15th day of March, 1940. *Caldecote, C.*

THE COURTS (EMERGENCY POWERS) CONSOLIDATION RULES, 1940. DATED MARCH 20, 1940.

S.R. & O., 1940. No. 408/L.6. Price 3d. net.

* 2 & 3 Geo. 6, c. 67. † S.R. & O. 1939 (No. 996) I, p. 491.

‡ S.R. & O., 1939 (No. 1610) I, p. 500.

War Legislation.

(*Supplementary List, in alphabetical order, to those published, week by week, in* THE SOLICITORS' JOURNAL, *from the 16th September, 1939, to the 23rd March, 1940.*)

Progress of Bills.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 21st March :—

Agriculture (Miscellaneous War Provisions).
Old Age and Widows' Pensions.
Rating and Valuation (Postponement of Valuations).

House of Commons.

Agricultural Wages (Regulation) Amendment Bill [H.C.].
Read First Time. [12th March.
Societies (Miscellaneous Provisions) Bill [H.C.].
Read Second Time. [20th March.
Solicitors (Emergency Provisions) Bill [H.L.].
Read Second Time. [20th March.
Special Enactments (Extension of Time) Bill [H.L.].
Read Second Time. [20th March.

Statutory Rules and Orders.

No. 375. **Alien.** Restriction on Landing and Embarkation. Direction, dated March 14.

No. 351. **Customs.** The Export of Goods (Control) (No. 8) Order, dated March 8.

Nos. 355 & 373. Customs. The Import of Goods (Prohibition) (Nos. 10 & 11) Orders, dated March 13 and 14.

No. 353. Customs. The Additional Import Duties (No. 2) Order, dated March 14. (Iron and Steel Goods.) (Amended Reprint.)

No. 376. **Emergency Powers (Defence).** Finance. The Export Control (Amendment) (No. 1) Order, dated March 15.

No. 356. Emergency Powers (Defence). Finance. The Securities (Exemption) Order, dated March 15.

No. 393. Emergency Powers (Defence). General Licence, dated March 18, under the Acquisition of Food (Excessive Quantities) Order, 1939.

No. 372. Emergency Powers (Defence). Food. Order, dated March 15, amending the General Licence, dated January 13, under the Home Grown Wheat (Control) Order, 1939.

No. 392. Emergency Powers (Defence). General Licence, dated March 16, under the Home Grown Oats (Control and Maximum Prices) Order, 1940.

No. 378. Emergency Powers (Defence). Food (Inspection of Undertakings) Order, dated March 14.

No. 385. Emergency Powers (Defence). The Defence (Gas Charges) Order, dated March 15.

No. 379. Emergency Powers (Defence). The Control of Iron and Steel (No. 7) (Scrap) Order, 1940, Direction (No. 2), dated March 18.

No. 388. Emergency Powers (Defence). Order, dated March 16, amending the Livestock (Sales) (Northern Ireland) Order, 1940.

No. 386. Emergency Powers (Defence). The London Passenger Transport Board (Execution of Works) Order, dated March 11.

No. 374. Emergency Powers (Defence). Entering and leaving United Kingdom. The Passenger Traffic (No. 3) Order, dated March 14.

No. 396. Emergency Powers (Defence). Standing Vehicles (Amendment) Order, dated March 8.

Provisional Rules and Orders.

Road Traffic and Vehicles. The Motor Vehicles (Definition of Motor Cars) Provisional Regulations, dated March 4.

Draft Statutory Rules and Orders.

Road Traffic and Vehicles. The Motor Vehicles (Gas-propelled Vehicles) (Variation of Speed Limit) Regulations, dated March 4.

Non-Parliamentary Publications.

STATIONERY OFFICE.

List of Emergency Acts and Statutory Rules and Orders. Supplement 14, dated March 19.

Copies of the above Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

THE SOLICITORS' LAW STATIONERY SOCIETY, LTD.

The report of the directors of The Solicitors' Law Stationery Society, Ltd., draws attention to the fact that legal business throughout the past year was adversely affected, first by the international uncertainty and eventually (and more seriously) by the outbreak of war, and this reduction in business is reflected in the Society's sales. The profit for the year, after making provision for liability for National Defence Contribution, amounted to £26,732 2s. 1d. The available balance amounts to £38,889 17s. 9d., and the directors recommend that a dividend of 7 per cent., less income tax, be paid for the year.

As the dividend exceeds 3 per cent., a bonus is distributable under the articles of association among solicitors whose accounts with the Society during the year amounted to £50 or upwards. A bonus is also payable to the staff under the profit-sharing scheme. The dividend and bonuses will absorb the sum of £25,439 18s. 6d., and, out of the balance, the directors propose to add £500 to the women's pension reserve, leaving £12,949 19s. 3d. to be carried forward.

The annual meeting will be held at 102–107, Fetter Lane, E.C.4, on Tuesday, 2nd April, at 12.30 p.m.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October 1939) 2%. Next London Stock Exchange Settlement, Thursday, 11th April, 1940.

	Div. Months.	Middle Price 27 Mar. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	107½	3 14 5	3 8 3
Consols 2½%	JAJO	72¾	3 9 2	—
War Loan 3% 1955–59	AO	99⅜	3 0 2	3 0 5
War Loan 3½% 1952 or after	JD	98½	3 11 1	—
Funding 4% Loan 1960–90	MN	109½xd	3 13 1	3 6 9
Funding 3% Loan 1959–69	AO	96½	3 2 2	3 3 9
Funding 2¾% Loan 1952–57	JD	96	2 17 4	3 1 2
Funding 2½% Loan 1956–61	AO	89⅜	2 15 9	3 3 6
Victory 4% Loan Av. life 21 years	MS	108¾	3 13 7	3 8 2
Conversion 5% Loan 1944–64	MN	107⅞xd	4 12 8	2 11 2
Conversion 3½% Loan 1961 or after	AO	97½	3 11 10	—
Conversion 3% Loan 1948–53	MS	100½	2 19 10	2 19 2
Conversion 2½% Loan 1944 49	AO	97½	2 11 3	2 16 4
National Defence Loan 3% 1954–58	JJ	99⅜	3 0 2	3 0 4
Local Loans 3% Stock 1912 or after	JAJO	84½	3 11 0	—
Bank Stock	AO	334xd	3 11 10	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	82	3 7 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	87	3 9 0	—
India 4½% 1950–55	MN	112½	4 0 0	3 0 8
India 3½% 1931 or after	JAJO	95½	3 13 4	—
India 3% 1948 or after	JAJO	82½	3 12 9	—
Sudan 4½% 1939–73 Av. life 27 years	FA	108	4 3 4	4 0 2
Sudan 4% 1974 Red. in part after 1950	MN	106	3 15 6	3 6 9
Tanganyika 4% Guaranteed 1951–71	FA	107	3 14 9	3 4 8
L.P.T.B. 4½% "T.F.A." Stock 1942–72	JJ	104	4 6 6	2 10 0
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	91½	2 14 8	3 3 9
COLONIAL SECURITIES				
*Australia (Commonw'th) 4% 1955–70	JJ	104½	3 16 7	3 12 1
Australia (Commonw'th) 3% 1955–58	AO	89½	3 7 0	3 15 8
*Canada 4% 1953–58	MS	107½	3 14 5	3 5 8
*Natal 3% 1929–49	JJ	99	3 0 7	3 2 8
New South Wales 3½% 1930–50	JJ	97½	3 11 10	3 16 1
New Zealand 3% 1945	AO	95½	3 2 10	4 0 2
Nigeria 4% 1963	AO	106	3 15 6	3 12 5
Queensland 3½% 1950–70	JJ	97½	3 11 10	3 12 9
*South Africa 3½% 1953–73	JD	100	3 10 0	3 10 0
Victoria 3½% 1929–49	AO	97½	3 11 10	3 16 1
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	84	3 11 5	—
Croydon 3% 1940–60	AO	93½	3 4 2	3 9 1
*Essex County 3½% 1952–72	JD	102	3 8 8	3 6 2
Leeds 3% 1927 or after	JJ	85	3 10 7	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	96	3 12 11	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	70	3 11 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	84	3 11 5	—
*London County 3½% Consolidated Stock 1954–59	FA	103	3 8 0	3 4 7
Manchester 3% 1941 or after	FA	84	3 11 5	—
Metropolitan Consd. 2½% 1920–49	MJSD	97½	2 11 3	2 16 4
Metropolitan Water Board 3% "A" 1963–2003	AO	87	3 9 0	3 10 4
Do. do. 3% "B" 1934–2003	MS	88½	3 7 10	3 9 0
Do. do. 3% "E" 1953–73	JJ	92	3 5 3	3 8 2
*Middlesex County Council 4% 1952–72	MN	105	3 16 2	3 10 3
* Do. do. 4½% 1950–70	MN	110	4 1 10	3 7 10
Nottingham 3% Irredeemable	MN	84	3 11 5	—
Sheffield Corp. 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	103½	3 17 4	—
Gt. Western Rly. 4½% Debenture	JJ	111	4 1 1	—
Gt. Western Rly. 5% Debenture	JJ	122¼	4 1 8	—
Gt. Western Rly. 5% Rent Charge	FA	116	4 6 2	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	114	4 7 9	—
Gt. Western Rly. 5% Preference	MA	100½	4 19 6	—
Southern Rly. 4% Debenture	JJ	102½	3 18 1	—
Southern Rly. 4% Red. Deb. 1962–67	JJ	104½	3 16 7	3 13 11
Southern Rly. 5% Guaranteed	MA	114	4 7 9	—
Southern Rly. 5% Preference	MA	100½	4 19 6	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.